

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JANE DOE, a minor, by and through  
her guardian ad litem, WILFRED  
SCOTT;

Plaintiff,

v.

RYAN GILL; ANTHONY MORGAN; and  
CITY OF SAN LEANDRO,

Defendants.

No. C 11-4759 CW

ORDER DIRECTING  
PETITIONER TO  
PROVIDE ADDITIONAL  
EVIDENCE

JUDY BROWN; and IMAREE CROSS;

Plaintiffs,

v.

RYAN GILL; ANTHONY MORGAN; and  
CITY OF SAN LEANDRO,

Defendants.

No. C 11-5009 CW

ERICKA WHITMEYER

Plaintiff,

v.

RYAN GILL; ANTHONY MORGAN; and  
CITY OF SAN LEANDRO,

Defendants.

No. C 11-5083 CW

Petitioner Wilfred Scott, as guardian ad litem for Plaintiff  
Jane Doe, a minor, requests approval of a compromise of Doe's  
claims against Defendants Ryan Gill, Anthony Morgan and the City  
of San Leandro.

1 Through her guardian ad litem, Scott, Doe initiated this  
2 lawsuit on September 23, 2011. In the complaint, Doe alleges  
3 that, on December 29, 2010, her mother, Gwendolyn Killings, was  
4 shot and killed by Defendants Gill and Morgan, police officers  
5 employed by Defendant City of San Leandro. Doe brought claims  
6 under 42 U.S.C. § 1983 for violations of the Fourth and Fourteenth  
7 Amendment and a survival action against Defendants Gill and  
8 Morgan, claims against Defendant City of San Leandro for failure  
9 to train and supervise properly, and claims against all Defendants  
10 for wrongful death.

11 On January 18, 2012, the Court consolidated Doe's action with  
12 the two higher-numbered actions captioned above. The plaintiffs  
13 in the other actions are also survivors and heirs of Gwendolyn  
14 Killings.

15 Scott filed the instant petition for approval of a minor's  
16 compromise on May 3, 2012. In his papers, he represents that the  
17 City of San Leandro, on behalf of all Defendants, has agreed to  
18 pay a total of \$50,000 to the four Plaintiffs to settle their  
19 claims, and that Plaintiffs have agreed to divide this amount  
20 equally, so that each will receive \$12,500. He also states that  
21 forty percent of Doe's recovery, or \$5,000, will be paid to her  
22 attorneys as fees, along with an additional \$311.15 as costs for  
23 deposition transcripts and chart reproduction. Thus, Doe's net  
24 recovery under the settlement would be \$7,188.85.

25 As the Ninth Circuit recently stated, "District courts have a  
26 special duty, derived from Federal Rule of Civil Procedure 17(c),  
27 to safeguard the interests of litigants who are minors." Robidoux  
28 v. Rosengren, 638 F.3d 1177, 1181 (9th Cir. 2011). "In the

1 context of proposed settlements in suits involving minor  
2 plaintiffs, this special duty requires a district court to  
3 'conduct its own inquiry to determine whether the settlement  
4 serves the best interests of the minor.'" Id. (quoting Dacanay v.  
5 Mendoza, 573 F.2d 1075, 1080 (9th Cir. 1978)).

6 The Ninth Circuit has directed that, in conducting this  
7 inquiry in cases involving the settlement of a minor's federal  
8 claims, district courts should "limit the scope of their review to  
9 the question whether the net amount distributed to each minor  
10 plaintiff in the settlement is fair and reasonable, in light of  
11 the facts of the case, the minor's specific claim, and recovery in  
12 similar cases," and should "evaluate the fairness of each minor  
13 plaintiff's net recovery without regard to the proportion of the  
14 total settlement value designated for adult co-plaintiffs or  
15 plaintiffs' counsel – whose interests the district court has no  
16 special duty to safeguard." Id. at 1181-82 (citing Dacanay, 573  
17 F.2d at 1078).

18 The Court notes that the percentage of Doe's total recovery  
19 to be paid to her counsel appears high. See, e.g., Botello v.  
20 Morgan Hill Unified Sch. Dist., 2011 WL 5313965, at \*2 (N.D. Cal.)  
21 (remarking, in assessing the settlement of a minor's claims, that  
22 "a 40% contingency fee strikes the Court as a bit high"). The  
23 Court also notes that, as a minor, Doe might have a greater need,  
24 and may have suffered greater damages, than the other Plaintiffs.

25 On the current record, the Court is unable to assess properly  
26 the fairness of Doe's net recovery. Accordingly, within seven  
27 days of the date of this Order, Petitioner shall provide evidence  
28 that Doe's net recovery under the settlement is fair and

1 reasonable in light of the strength of her claims, the facts of  
2 the case and recovery in other similar cases.

3 IT IS SO ORDERED.

4 Dated: 5/23/2012

  
CLAUDIA WILKEN  
United States District Judge

United States District Court  
For the Northern District of California